

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

IN RE:)	
)	
MICHAEL FRANCIS PUSATERI, III,)	Case No. 08-31457-JCW
)	(Chapter 7)
Debtor.)	
_____)	
)	
CONGRESSIONAL FEDERAL CREDIT UNION,)	
)	
Plaintiff,)	
)	
v.)	Adv. Pro. No. 08-03149-JCW
)	
MICHAEL FRANCIS PUSATERI, III,)	
)	
Defendant.)	
_____)	

PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL OF
SECOND AMENDED COMPLAINT TO
DETERMINE DISCHARGEABILITY OF DEBT

COMES NOW the plaintiff, Congressional Federal Credit Union ("Plaintiff"), through counsel, and hereby requests leave of Court to withdraw all of its pending claims against the debtor/defendant, Michael Francis Pusateri, III ("Defendant"), in the above-captioned adversary proceeding by voluntarily dismissing its Second Amended Complaint to Determine Dischargeability of Debt, and as reasons therefor Plaintiff states as follows:

1. The Plaintiff filed this adversary proceeding in November 2008 in conjunction with the Chapter 7 bankruptcy case initiated in July 2008 by the Defendant. Plaintiff's dischargeability claims against the Defendant, totaling \$12,637.77 as set forth in its Second Amended Complaint, are based upon the prepetition charges incurred by

the Defendant after January 1, 2008, on his Visa credit card account maintained with the Plaintiff. The Second Amended Complaint specifically identifies each charge at issue, and further alleges that some of the charges incurred by the Defendant are potentially subject to the statutory presumption of nondischargeability set forth in the provisions of 11 U.S.C. §523(a)(2)(C)(i)(I).

2. Following a series of procedural Motions by the Defendant, the Court ruled by Order entered May 18, 2009, that the Second Amended Complaint was legally sufficient to state a *prima facie* cause of action against the Defendant.

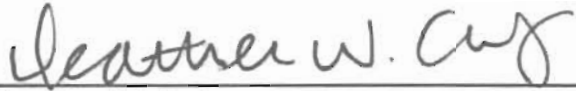
3. Counsel for Plaintiff subsequently had an opportunity to depose the Defendant pursuant to Bankruptcy Rule 7030 on June 4, 2009.

4. The Plaintiff has now reassessed its position with respect to this adversary proceeding following the deposition testimony referenced in ¶ 3, hereinabove.

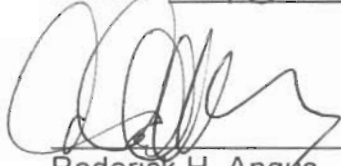
5. Based upon practical and strategic considerations, together with the deposition testimony of the Defendant, Plaintiff has determined that it no longer wishes to pursue the claims set forth in the Second Amended Complaint. Accordingly, Plaintiff hereby seeks leave of Court, as provided in Bankruptcy Rule 7041(a)(1)(B), to withdraw all of its claims set forth in the Second Amended Complaint by taking a voluntary dismissal thereof.

WHEREFORE, the Plaintiff prays that its Motion be granted, and that this Court enter an Order granting Plaintiff's request for a voluntary dismissal of the Second Amended Complaint, and that this Court grant the Plaintiff such other and further relief as it deems just.

This the 25th day of June, 2009.



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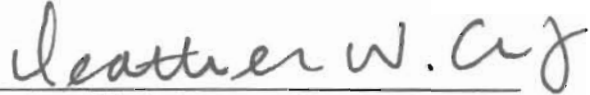
CERTIFICATE OF SERVICE

I hereby certify that the foregoing PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL OF SECOND AMENDED COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT was this day served on the parties below by mailing a copy of same in an envelope addressed to each party with proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Postal Service on the 25th day of June, 2009.

Bankruptcy Administrator
(via electronic service only)

David R. Badger
David R. Badger, P.A.
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Charlotte, NC 28203
Attorney for Defendant

Wayne Sigmon
Wayne Sigmon Attorney at Law PLLC
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Trustee/Attorney for Trustee

A handwritten signature in dark ink, reading "Heather W. Culp". The signature is written in a cursive style with a horizontal line underneath the name.

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